22 **(1) S.B. CIVIL WRIT PETITION NO.7746/2007.**
Ram Pratap Dagla Vs. State & Ors.
..
23 **(2) S.B. CIVIL WRIT PETITION NO.7747/2007.**
Smt. Amarjeet Kaul Vs. State & Ors.
..
30 **(3) S.B. CIVIL WRIT PETITION NO.7759/2007.**
Gurtej Singh Vs. State & Ors.
..
31 **(4) S.B. CIVIL WRIT PETITION NO.7760/2007.**
Smt. Beena Bhateja Vs. State & Ors.
..
32 **(5) S.B. CIVIL WRIT PETITION NO.7761/2007.**
Smt. Manju Sharma Vs. State & Ors.
..
33 **(6) S.B. CIVIL WRIT PETITION NO.7762/2007.**
Badri Prasad Vs. State & Ors.
..
34 **(7) S.B. CIVIL WRIT PETITION NO.7763/2007.**
Smt. Usha Rani Sidana Vs. State & Ors.
..
35 **(8) S.B. CIVIL WRIT PETITION NO.7764/2007.**
Smt. Saroj Chind Vs. State & Ors.
..
36 **(9) S.B. CIVIL WRIT PETITION NO.7765/2007.**
Smt. Pushpa Sharad Vs. State & Ors.
..

Date of Order :: 29th November 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Pramendra Bohra, for the petitioner/s.

....

BY THE COURT:

By way of these writ petitions, the petitioners, working on the post of teacher seek to question the orders of transfer whereby each of them has been transferred from the present place of posting within one Panchayat Samiti to another place of posting within some other Panchayat Samiti; and so also the orders made by the Rajasthan Civil Services Appellate Tribunal dismissing their respective appeals against the said

transfer order. For common questions of law being involved and the petitioners essentially raising identical contentions, these petitions have been heard together; and, for this Court being satisfied that the petitions do not merit admission, are taken up for disposal by this common order.

Each of the petitioners, working on the post of Teacher Gr.III has been transferred from a Government Primary/Upper Primary School within one Panchayat Samiti to some other Government Primary/Upper Primary School within another Panchayat Samiti like the petitioner in CWP No.7746/2007 has been transferred from Government Primary School, 18-F, Panchayat Samiti, Sriganganagar to 25-H, Dalpatsinghpura, Panchayat Samiti, Srikaranpur. It is not in dispute that the other petitioners have likewise been transferred from one Panchayat Samiti to another. The petitioners filed individual appeals before the Tribunal against such transfer orders that have been rejected by the Tribunal with the findings that the transfer order was made by the State Government within its powers under Rule 289 and 290 of the Rajasthan Panchayati Raj Rules, 1996 (‘the Rules of 1996’) and that it was for the administration to decide as to the services of which employee should be taken where.

Seeking to assail the transfer orders and the orders passed by the Tribunal, learned counsel for the petitioner/s has strenuously argued that the impugned orders made by the State Government are wholly without jurisdiction and the Tribunal has erred in summarily rejecting the appeals filed by the petitioners. Learned counsel submitted that even when Sub-section (8-A) of Section 89 of the Rajasthan Panchayati Raj Act,1994 ('the Act of 1994') provides for the powers of the State Government regarding transfer of an employee, the procedure as provided in the Rules of 1996 is required to be followed and in view of Rule 289 (2) of the Rules 1996, the State Government cannot make orders of posting by transfer because such posting is to be made by Panchayat Samiti or Zila Parishad on the recommendation of the District Establishment Committee and, therefore, the State Government could, at the most, make recommendation but not the order of posting by transfer.

The submissions as made on behalf of the petitioners remain bereft of substance and these writ petitions do not merit admission.

While dealing with the similar nature submissions and with reference to the provisions of Sub-section (8-A) of Section 89 of the Act of 1994 and Rules 289 and 290 of the Rules of 1996, this Court has pointed in the case of Meena Sharma Vs.

State of Rajasthan & Ors. : S.B. Civil Writ Petition No.7374/2007, decided on 19.11.2007, thus:

> "Sub-section (8-A) of Section 89 has been inserted by way of amendment to the Act of 1994 with a non obstante clause overriding the provisions of Sub-section (8) of Section 89. Thus, the powers of the State Government to transfer any member of service from one Panchayat Samiti to another within or outside the district, from one Zila Parishad to another, from one Panchayat Samiti to Zila Parishad or from one Zila Parishad to Panchayat Samiti have their overriding effect on any other power of transfer with any other authority. Operation of such wide powers finds incorporation in the scheme of the Rules of 1996 too. The State Government may also stay the operation of, or cancel, any order of transfer made under Sub-section (8) of Section 89 whereby appointment by transfer is envisaged to be made after consultation with Pradhans or Pramukhs of Panchayat Samitis and Zila Parishads, as the case may be, whereto and wherefrom such transfer is proposed to be made.
>
> A look at the Rules aforesaid and the source of wide powers of the State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994, makes it clear that it is within the competence of the State Government, inter alia, to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District. The submissions as made by learned counsel for the petitioner that the State Government could only lay down a policy and else posting by transfer is envisaged to be made only by Panchayat Samiti or Zila Parishad concerned by virtue of Rule 289(2) and further submission that if Rule 289(3) and other provisions are read providing independent power to the State Government to issue orders of transfer, the same might render redundant Rule 289(2) is, in the considered opinion of this Court, not a correct reading of the said provisions nor a correct comprehension of their scheme.

> As noticed, wide powers of the State Government flowing from Sub-section (8-A) of Section 89 have their overriding effect and are not whittled down by any other provision in the Act nor could be read circumscribed by any provision in the Rules. Contrary to the suggestion as made by the learned counsel, Sub-rule (3) of the Rule 289 not only operates to give effect to such powers of the State Government but makes them emphatically clear while providing that in case District Establishment Committee or Standing Committee does not agree, the Chief Executive Officer or Vikas Adhikari, as the case may be, should carry out the orders of the State Government. Similarly, Rule 290 of the Rules of 1996, though its Sub-rule (1) refers to the transfer outside a district, but incorporates the aforementioned powers of the State Government in the comprehensively framed Sub-rule (2) and again, Chief Executive Officer or Vikas Adhikari concerned is required to carry out the orders of transfer. The powers of the State Government being untrammelled and unaffected by any other power with any other authority to issue transfer order, this Court is clearly of opinion that the transfer order of the present nature as issued by the State Government, transferring an employee from one Panchayat Samiti to another Panchayat Samiti, does not suffer from want of authority nor could be said to have been issued in violation of any statutory condition or requirement.
>
> The Tribunal has not committed any error or illegality in rejecting the submissions as made in this case on behalf of the petitioner. There is no ground for interference."

For the view already taken by this Court that the wide powers of the State Government have their overriding effect and are not whittled down by any other provision in the Act nor could be read circumscribed by any provision in the Rules, the

transfer order issued in the case of the each of the petitioner transferring him/her from one Panchayat Samiti to another Panchayat Samiti, does not suffer from want of authority.

Following the aforesaid decision in the case of Meena Sharma and another order dated 19.11.2007 made in the batch of petitions including S.B. Civil Writ Petition No.7341/2007 (Ram Lal Bishnoi Vs. Rajasthan Civil Services Appellate Tribunal & Ors.), this Court is clearly of opinion that there is no ground for interference in these petitions.

The writ petitions fail and are, therefore, rejected.

(DINESH MAHESHWARI), J.

Mohan/